IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

Bail Appl..No. 3692 of 2007()

CRIME NO.78 OF 2007 OF AMBALATHARA POLICE STATION

: PETITIONER/ACCUSED

A.V.KUNHI RAMAN, AGED 45 YEARS,
S/O. KUTTIYAN, MEENGOTH, PULLUR VILLAGE AND POST,
KASARGODE DISTRICT.

BY ADV. SRI.JAWAHAR JOSE

RESPONDENTS: STATE

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.3692 of 2007

Dated this the 19th day of June, 2007

ORDER

Application for anticipatory bail. Petitioner faces allegations under Section 308 I.P.C (and strangely not 307 I.P.C). The crux of the allegations is that with the intention of causing death of the defacto complainant, the petitioner fired a shot from his pistol at the defacto complainant. The defacto complainant suffered gun shot injury. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations are totally false. There is bitter animosity between the complainant and the accused and the complainant has invented fanciful allegations to falsely implicate the petitioner. In the F.I statement, there is no specific allegation even of a pistol being used to commit the offence. In these circumstances, directions under Section 438 Cr.P.C may be issued, prays the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the allegations are serious. The case diary reveals satisfactory materials to support the allegations raised. Though in the F.I statement, there is no specific

reference to a fire arm, a total reading of the F.I statement must convey that a fire arm was used for the commission of the offence. Custodial interrogation is essential. Recovery of the weapon is absolutely necessary. In these circumstances, the petitioner is not entitled to any direction under Section 438 Cr.P.C, submits the learned Public Prosecutor .

4. I find merit in the opposition by the learned Public Prosecutor. I shall scrupulously avoid any detailed discussion or expression of opinion on the acceptability of the allegations and the credibility of the data collected. Suffice it to say that I am not persuaded at all to hold that this is a fit case where directions under Section 438 Cr.P.C can or ought to be issued. The petitioner must follow the ordinary and normal procedure of appearing/surrendering before the Investigating Officer or the learned Magistrate. He must then seek bail in the ordinary course.

5. In the result, this application is, dismissed with the above observations.

(R.BASANT, JUDGE)

rtr/-